SUPREME COURT, U. S.

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 526

BLANCO OIL CO. and KILLAM & HURD, *Petitioners,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONERS' REPLY TO MEMORANDUM FOR THE FEDERAL POWER COMMISSION

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The Federal Power Commission has suggested that the present petition should be held for this Court's final disposition of petitions in other similar cases arising from orders issued by the Court of Appeals for the Tenth Circuit. The Commission asserts that

this procedure would be proper because the Tenth Circuit cases fully present the refund issue raised by petitioners.

Petitioners agree that, as a general rule, where a petition raises the same issue involved in a pending case the Court should defer action on the petition until the pending case is decided and then dispose of the petition summarily in conformity with its decision. However, as the Commission admits, this procedure is sound only if the issues are in fact identical and if there are no other persuasive reasons for hearing both cases.

1. The present case is not identical to those arising in the Tenth Circuit. Both this petition and those from the Tenth Circuit raise the basic legal question of whether the Natural Gas Act empowers the Commission to order refunds of rates collected under the authority of unconditioned temporary certificates. However, because of two unique fact situations the present petition also raises other substantial issues that are not involved in the Tenth Circuit petitions.

First, in petitioners' acceptances of their temporary certificates they agreed to dedicate their gas to interstate commerce at the reduced rate demanded by the Commission only if it was agreed that no refund obligation would be imposed (J.A. 232-237). The Commission accepted this condition in writing and ordered it made part of petitioners' rate schedules. The Commission's unilateral abrogation of this agreement raises serious questions that are not presented by the Tenth Circuit cases.

Second, the Atlantic Refining Company, which had temporary authority to sell gas from the same field

and at the same price as petitioners (and in one instance from the same well), has been granted a permanent certificate without any refund obligation. Thus, the Commission has placed the petitioners, who are among the smallest producers in the field, at a considerable competitive disadvantage with regard to Atlantic, the largest producer in the field. This discrimination is hardly consistent with the Commission's announced intention of setting uniform in-line prices for each gas producing area.

Therefore, assuming arguendo that the Commission has the authority to order refunds in appropriate cases, the present petition raises serious questions of due process, equal protection and statutory interpretation with regard to the propriety of exercising that authority over petitions. These questions cannot be settled by the Tenth Circuit cases.

2. There is an additional persuasive reason why the present petition should not be held for summary disposition based upon the outcome of the Tenth Circuit cases. The failure to grant petitioners a hearing would further compound the fundamental unfairness incumbent in the fact that they have never been afforded an adequate hearing by either the Commission or the court of appeals.

The Commission summarily determined that petitioners were obliged to make refunds and effectively denied petitioners any opportunity to present evidence on the issue. The court of appeals undertook to rule on the refund issue even though petitioners and others urged that it was not before the court and made no presentation to that court on the refund issue. Under these circumstances it is respectfully urged that this

Court insure that petitioners receive an adequate hearing.

3. It is certainly not without precedent for this Court to hear argument simultaneously in several similar or related cases where the basic legal questions are identical but factual differences may require dissimilar results. Petitioners submit that this is just such a case. However, petitioners also realize that multiple proceedings impose a considerable burden upon the limited time of the Court. Therefore, if the Court feels that oral argument by petitioners would constitute such a burden, petitioners are willing to submit their arguments on briefs alone.

CONCLUSION

Petitioners renew their request that a writ of certiorari be granted and the case consolidated for briefing and oral argument with the similar petitions pending in the Tenth Circuit cases. Alternatively, petitioners urge that a writ of certiorari be granted for the purpose of allowing petitioners to submit their case to the Court on briefs alone.

Respectfully submitted,

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